



DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 802

[Docket ID TREAS-DO-2023-0006]

RIN 1505-AC82

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the proposed rule amending the definition of “military installation” and adding eight military installations to the appendix in the regulations of the Committee on Foreign Investment in the United States that implement the provisions relating to real estate transactions pursuant to the Defense Production Act of 1950, as amended. This rule also makes technical amendments in the form of name changes to five military installations.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For questions about this rule, contact: Meena R. Sharma, Acting Director, Office of Investment Security Policy and International Relations, or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Proposed Definition of Military Installation and Appendix A

On May 5, 2023, the U.S. Department of the Treasury (Treasury Department) published in the Federal Register a proposed rule (88 FR 29003) amending the definition of “military installation” and adding eight military installations to the list at appendix A of the regulations in part 802 to title 31 of the Code of Federal Regulations (part 802) that implement the provisions relating to real estate transactions pursuant to section 721 of the Defense Production Act of 1950, as amended (section 721). Part 802 sets forth the processes and procedures of the Committee on Foreign Investment in the United States (CFIUS) for reviewing transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. Appendix A identifies, among other things, the bases, ranges, and other installations that meet the definition of “military installation” at § 802.227. The amendments were proposed as a result of the ongoing evaluation of military installations by the U.S. Department of Defense (Defense Department).

B. Additional Technical Amendments to Update the Names of Certain Military Installations

This final rule also includes technical amendments to update the names of five military installations at appendix A: Fort Cavazos (formerly Fort Hood); Fort Gregg-Adams (formerly Fort Lee); Fort Johnson (formerly Fort Polk); Fort Liberty (formerly Fort Bragg); and Fort Moore (formerly Fort Benning). These are name changes to installations already on the list at appendix A and reflect decisions made by the Defense Department to implement the recommendations of the Defense Department Naming Commission. The military installation name changes in this final rule are those that have officially been changed by the Defense Department as of the publication date of this rule in the Federal Register. Additional bases may be renamed in the future, and information on the full list of recommended name changes is available at <https://media.defense.gov/2022/Oct/06/2003092544/-1/-1/1/IMPLEMENTATION-OF-THE-NAMING-COMMISSIONS-RECOMMENDATIONS.PDF> and

<https://www.defense.gov/News/News-Stories/Article/Article/3260434/dod-begins-implementing-naming-commission-recommendations/>.

C. Additional Guidance

The Treasury Department, in coordination with the Defense Department and the U.S. Department of Commerce's Census Bureau (Census Bureau), makes available a web-based tool to help the public understand the geographic coverage of part 802. This web-based tool is available at <https://mtgis-portal.geo.census.gov/arcgis/apps/webappviewer/index.html?id=0bb1d5751d76498181b4b531987ce263> and allows users to input an address and determine the distance to certain military installations. The tool was developed to assist the public and is provided for reference only; it should not be interpreted as guidance or an advisory opinion by CFIUS with respect to any particular transaction.

II. Summary of Comments

The public was provided an opportunity to comment on the proposed rule, and comments were due by June 5, 2023. During the public comment period, the Treasury Department received five comments reflecting a range of views. All comments received are available on the public rulemaking docket at <https://www.regulations.gov> and are addressed herein.

The Treasury Department considered each comment submitted on the proposed rule. One commenter expressed the view that these provisions should be expanded to U.S. developers and realtors to address the overdevelopment of U.S. land located in natural disaster zones. The rule makes no change in response to this comment as it is outside the scope of section 721.

One commenter expressed the view that the regulations should further address risks posed by incompatible development around military installations such as from the construction of obstructions, visual and other interference from certain land uses, and light emissions, among other things. The commenter further expressed a view with respect to adding air installations to

appendix A and related operational security risks. The rule makes no change in response to these comments. The Treasury Department and the Defense Department consult on the composition of appendix A and part 802 more broadly, taking into account the statutory requirements under section 721 and a variety of considerations.

One commenter requested guidance regarding whether legal name changes, inherited property, and gifts to relatives would be within the definition of a covered real estate transaction under part 802. The rule makes no change in response to this comment. Consistent with section 721 and as defined in § 802.212(a), a covered real estate transaction includes any purchase or lease by, or concession to, a foreign person of covered real estate that affords the foreign person at least three property rights under § 802.233. Real estate acquired by gift or inheritance is distinct from a purchase, lease, or concession as those terms are defined in part 802. By contrast, a person or entity that amends a property record or document to reflect a legal name change may or may not have engaged in a purchase, lease, or concession as those terms are defined in part 802—further analysis of the underlying reason for the name change would be required. For example, a corporate name change may follow an acquisition transaction, which, depending on the rights conveyed in that transaction, could be a covered real estate transaction (or be subject to CFIUS’s jurisdiction relating to foreign investment in U.S. businesses which is detailed in 31 CFR part 800). As a general reminder, the Treasury Department notes that pursuant to § 802.212, the definition of a “covered real estate transaction” includes any transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721 as it relates to real estate transactions.

One commenter suggested adding Whiteman Air Force Base in Missouri to the list of military installations at appendix A. The rule makes no change in response to this comment. As noted in the proposed rule, the Defense Department will continue on an ongoing basis to assess its military installations and the geographic scope set under the rule to ensure appropriate application in light of national security considerations.

One commenter suggested an amendment to § 802.216(c) to exclude from the definition of “excepted real estate transaction” any purchase, lease, or concession of covered real estate by a person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary. The rule makes no change in response to this comment. The Treasury Department and the Defense Department consult on the definition of “excepted real estate transaction” taking into account the statutory requirements under section 721 and a variety of considerations.

No additional comments were received. The final rule therefore adopts the proposed rule without change other than the technical amendments described above.

III. Rulemaking Requirements

Executive Order 12866

This rule is not subject to the general requirements of Executive Order 12866, as amended, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), because it relates to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, this rule is not subject to review under section 6(b) of Executive Order 12866 pursuant to section 1(d) of the June 9, 2023, Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB’s standard centralized review process under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis, unless the agency certifies that the rule, once implemented, will not have a significant economic impact on a substantial number of small entities. The final rule makes amendments to part 802 (see 85 FR 3158), which the Treasury Department previously determined would not significantly impact a substantial number of small entities. The amendments in this rule do not change that analysis or determination.

Congressional Review Act

This rule has been submitted to the OMB’s Office of Information and Regulatory Affairs, which has determined that the rule is not a “major” rule under the Congressional Review Act.

List of Subjects in 31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Treasury Department amends 31 CFR part 802 as follows:

PART 802—REGULATIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

1. The authority citation for part 802 continues to read as follows:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart B—Definitions

§ 802.227 [Amended]

2. Amend § 802.227, in paragraph (m), by removing the words “Oregon, Nevada, Idaho, Wisconsin, Mississippi, North Carolina, or Florida” and adding in their place “Arizona, California, Florida, Idaho, Iowa, Mississippi, Nevada, North Carolina, North Dakota, Oregon, South Dakota, Texas, or Wisconsin”.

3. Revise parts 1 and 2 of appendix A to part 802 to read as follows:

Appendix A to Part 802—List of Military Installations and Other U.S. Government Sites

Site name	Location
Part 1	
Adelphi Laboratory Center.....	Adelphi, MD.
Air Force Maui Optical and Supercomputing Site.....	Maui, HI.
Air Force Office of Scientific Research.....	Arlington, VA.
Andersen Air Force Base.....	Yigo, Guam.
Army Futures Command.....	Austin, TX.
Army Research Lab—Orlando Simulations and Training Technology Center.....	Orlando, FL.

Army Research Lab—Raleigh Durham.....	Raleigh Durham, NC.
Arnold Air Force Base	Coffee County and Franklin County, TN
Beale Air Force Base	Yuba City, CA.
Biometric Technology Center (Biometrics Identity Management Activity)	Clarksburg, WV.
Buckley Air Force Base	Aurora, CO.
Camp MacKall	Pinebluff, NC.
Cape Cod Air Force Station	Sandwich, MA.
Cape Newenham Long Range Radar Site	Cape Newenham, AK.
Cavalier Air Force Station	Cavalier, ND.
Cheyenne Mountain Air Force Station	Colorado Springs, CO.
Clear Air Force Station	Anderson, AK.
Creech Air Force Base	Indian Springs, NV.
Davis-Monthan Air Force Base	Tucson, AZ.
Defense Advanced Research Projects Agency	Arlington, VA.
Eareckson Air Force Station	Shemya, AK.
Eielson Air Force Base	Fairbanks, AK.
Ellington Field Joint Reserve Base	Houston, TX.
Fairchild Air Force Base	Spokane, WA.
Fort Belvoir	Fairfax County, VA.
Fort Bliss	El Paso, TX.
Fort Campbell	Hopkinsville, KY.
Fort Carson	Colorado Springs, CO.
Fort Cavazos	Killeen, TX.
Fort Detrick	Frederick, MD.
Fort Drum	Watertown, NY.
Fort Gordon	Augusta, GA.
Fort Gregg-Adams	Petersburg, VA.
Fort Knox	Fort Knox, KY.
Fort Leavenworth	Leavenworth, KS.
Fort Leonard Wood	Pulaski County, MO.
Fort Meade	Anne Arundel County, MD.
Fort Moore	Columbus, GA.
Fort Riley	Junction City, KS.
Fort Shafter	Honolulu, HI.
Fort Sill	Lawton, OK.
Fort Stewart	Hinesville, GA.
Fort Yukon Long Range Radar Site	Fort Yukon, AK.
Francis E. Warren Air Force Base	Cheyenne, WY.
Guam Tracking Station.....	Inarajan, Guam.
Hanscom Air Force Base	Lexington, MA.
Holloman Air Force Base	Alamogordo, NM.
Holston Army Ammunition Plant	Kingsport, TN.
Joint Base Anacostia-Bolling	Washington, DC.
Joint Base Andrews	Camp Springs, MD.
Joint Base Elmendorf-Richardson	Anchorage, AK.
Joint Base Langley-Eustis	Hampton, VA and Newport News, VA.
Joint Base Lewis-McChord	Tacoma, WA.
Joint Base McGuire-Dix-Lakehurst	Lakehurst, NJ.
Joint Base Pearl Harbor-Hickam	Honolulu, HI.

Joint Base San Antonio	San Antonio, TX.
Joint Expeditionary Base Little Creek-Fort Story	Virginia Beach, VA.
Kaena Point Satellite Tracking Station	Waianae, HI.
King Salmon Air Force Station	King Salmon, AK.
Kirtland Air Force Base	Albuquerque, NM.
Kodiak Tracking Station	Kodiak Island, AK.
Los Angeles Air Force Base.....	El Segundo, CA.
MacDill Air Force Base	Tampa, FL.
Malmstrom Air Force Base.....	Great Falls, MT.
Marine Corps Air Ground Combat Center Twentynine Palms	Twentynine Palms, CA.
Marine Corps Air Station Beaufort	Beaufort, SC
Marine Corps Air Station Cherry Point	Cherry Point, NC.
Marine Corps Air Station Miramar	San Diego, CA.
Marine Corps Air Station New River	Jacksonville, NC.
Marine Corps Air Station Yuma	Yuma, AZ.
Marine Corps Base Camp Lejeune	Jacksonville, NC.
Marine Corps Base Camp Pendleton	Oceanside, CA.
Marine Corps Base Hawaii	Kaneohe Bay, HI.
Marine Corps Base Hawaii, Camp H.M. Smith	Halawa, HI.
Marine Corps Base Quantico	Quantico, VA.
Mark Center	Alexandria, VA.
Minot Air Force Base	Minot, ND.
Moody Air Force Base	Valdosta, GA.
Naval Air Station Joint Reserve Base New Orleans	Belle Chasse, LA.
Naval Air Station Oceana	Virginia Beach, VA.
Naval Air Station Oceana Dam Neck Annex	Virginia Beach, VA.
Naval Air Station Whidbey Island	Oak Harbor, WA.
Naval Base Guam	Apra Harbor, Guam.
Naval Base Kitsap Bangor	Silverdale, WA.
Naval Base Point Loma	San Diego, CA.
Naval Base San Diego	San Diego, CA.
Naval Base Ventura County—Port Hueneme Operating Facility	Port Hueneme, CA.
Naval Research Laboratory	Washington, DC.
Naval Research Laboratory—Blossom Point	Welcome, MD.
Naval Research Laboratory—Stennis Space Center	Hancock County, MS.
Naval Research Laboratory—Tilghman	Tilghman, MD.
Naval Station Newport	Newport, RI.
Naval Station Norfolk	Norfolk, VA.
Naval Submarine Base Kings Bay	Kings Bay, GA.
Naval Submarine Base New London	Groton, CT.
Naval Surface Warfare Center Carderock Division—Acoustic Research Detachment	Bayview, ID.
Naval Support Activity Crane	Crane, IN.
Naval Support Activity Orlando	Orlando, FL.
Naval Support Activity Panama City	Panama City, FL.
Naval Support Activity Philadelphia	Philadelphia, PA.
Naval Support Facility Carderock	Bethesda, MD.
Naval Support Facility Dahlgren	Dahlgren, VA.
Naval Support Facility Indian Head	Indian Head, MD.
Naval Weapons Station Seal Beach Detachment Norco	Norco, CA.
New Boston Air Station	New Boston, NH.

Offutt Air Force Base	Bellevue, NE.
Oliktok Long Range Radar Site	Oliktok, AK.
Orchard Combat Training Center	Boise, ID.
Peason Ridge Training Area	Leesville, LA.
Pentagon	Arlington, VA.
Peterson Air Force Base	Colorado Springs, CO.
Picatinny Arsenal	Morris County, NJ.
Piñon Canyon Maneuver Site	Tyrone, CO.
Pohakuloa Training Area	Hilo, HI.
Point Barrow Long Range Radar Site	Point Barrow, AK.
Portsmouth Naval Shipyard	Kittery, ME.
Radford Army Ammunition Plant	Radford, VA.
Redstone Arsenal	Huntsville, AL.
Rock Island Arsenal	Rock Island, IL.
Rome Research Laboratory	Rome, NY.
Schriever Air Force Base	Colorado Springs, CO.
Seymour Johnson Air Force Base	Goldsboro, NC.
Shaw Air Force Base	Sumter, SC.
Southeast Alaska Acoustic Measurement Facility	Ketchikan, AK.
Tin City Long Range Radar Site	Tin City, AK.
Tinker Air Force Base	Midwest City, OK.
Travis Air Force Base	Fairfield, CA.
Tyndall Air Force Base	Bay County, FL.
U.S. Army Natick Soldier Systems Center	Natick, MA.
Watervliet Arsenal	Watervliet, NY.
Wright-Patterson Air Force Base	Dayton, OH.

Site name	Location
Part 2	
Aberdeen Proving Ground	Aberdeen, MD.
Air Force Plant 42	Palmdale, CA.
Camp Shelby	Hattiesburg, MS.
Cape Canaveral Air Force Station	Cape Canaveral, FL.
Dare County Range	Manns Harbor, NC.
Dyess Air Force Base	Abilene, TX.
Edwards Air Force Base	Edwards, CA.
Eglin Air Force Base	Valparaiso, FL.
Ellsworth Air Force Base	Box Elder, SD.
Fallon Range Complex	Fallon, NV.
Fort Greely	Delta Junction, AK.
Fort Huachuca	Sierra Vista, AZ.
Fort Irwin	San Bernardino County, CA.
Fort Johnson	Leesville, LA.
Fort Liberty	Fayetteville, NC.
Fort Wainwright	Fairbanks, AK.
Grand Forks Air Force Base	Grand Forks, ND.
Hardwood Range	Necedah, WI.
Hill Air Force Base	Ogden, UT.
Iowa National Guard Joint Force Headquarters	Des Moines, IA.
Lackland Air Force Base	San Antonio, TX.

Laughlin Air Force Base	Del Rio, TX.
Luke Air Force Base	Glendale, AZ.
Mountain Home Air Force Base	Mountain Home, ID.
Naval Air Station Meridian	Meridian, MS.
Naval Air Station Patuxent River	Lexington Park, MD.
Naval Air Weapons Station China Lake	Ridgecrest, CA.
Naval Base Kitsap—Keyport	Keyport, WA.
Naval Base Ventura County—Point Mugu Operating Facility	Point Mugu, CA.
Naval Weapons Systems Training Facility Boardman	Boardman, OR.
Nellis Air Force Base	Las Vegas, NV.
Nevada Test and Training Range	Tonopah, NV.
Pacific Missile Range Facility	Kekaha, HI.
Patrick Air Force Base	Cocoa Beach, FL.
Tropic Regions Test Center	Wahiawa, HI.
Utah Test and Training Range	Barro, UT.
Vandenberg Air Force Base	Lompoc, CA.
West Desert Test Center	Dugway, UT.
White Sands Missile Range	White Sands Missile Range, NM.
Yuma Proving Ground	Yuma, AZ.

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Paul M. Rosen,
Assistant Secretary for Investment Security.